

**Letter of Findings: 01-20150067
Individual Indiana Income Tax
For the Years 2008 through 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual was not entitled to an abatement of proposed assessments of additional individual income tax on the ground that the assessments were based on unresolved allegations. Individual's plea agreement submitted to the federal court - although not yet accepted by that court - along with information available to the Department, were sufficient to establish that the proposed assessments were based on the "best information available."

ISSUE

I. Individual Indiana Income Tax - Best Information Available Assessment.

Authority: IC § 6-3-2-1(a); IC § 6-8.1-5-1(a); IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Keller v. Indiana Dept. of State Revenue, 530 N.E.2d 787 (Ind. Tax Ct. 1988).

Taxpayer argues that the Department's assessments of additional Indiana income tax for the years at issue were unwarranted.

STATEMENT OF FACTS

Taxpayer is an Indiana individual who previously filed Indiana income tax returns for 2008, 2009, 2010, 2011, and 2012. The Indiana Department of Revenue ("Department") issued proposed assessments for additional income tax for those same years. The Department's records state that the assessment "reflects the tax due from a criminal investigation," "is the result of a desk examination," and is "based on the best information available."

Taxpayer disagreed with the additional assessments and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Individual Indiana Income Tax - Best Information Available Assessment.

DISCUSSION

The Department issued proposed assessments based on public information and information provided by a federal investigator. That information indicated Taxpayer had been charged with conducting illegal activities which resulted in Taxpayer obtaining previously unreported, additional income. Taxpayer disagrees with the assessments arguing that the assessments are premature and unsubstantiated.

All tax assessments are prima facie evidence that the Department's claim for the tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463, 466 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct.

2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a).

The Department issued the proposed assessment under the authority of IC § 6-8.1-5-1(a).

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department. (Emphasis added).

Taxpayer argues that the assessments were not based on the "best information available" to the Department. Taxpayer points out that Taxpayer has been charged with certain purportedly criminal activities, that no trial has been conducted, no admissions made, and no plea agreement arrived at. Taxpayer points out:

In none of the public documents relating to this on-going criminal investigation does the federal government allege with any specificity that [Taxpayer] benefited personally from [Taxpayer's] alleged activities. Further, in none of the public documents relating to this on-going criminal investigation does the federal government allege that there was any increase to the [Taxpayer's] adjusted gross income from 2008 through 2012, nor does the government allege with any specificity the amounts by which the [Taxpayer's] adjusted gross income purportedly increased as the result of the alleged criminal activity. Finally, the indictment does not include any allegations of federal tax fraud, tax evasion, or underreporting of income.

In addition, Taxpayer alleges that if - as charged - Taxpayer engaged in the activities with which he has been charged, there is no evidence that Taxpayer benefitted financially from those activities.

In *Keller v. Indiana Dept. of State Revenue*, 530 N.E.2d 787 (Ind. Tax Ct. 1988), the court held that the petitioner was entitled to an order enjoining the Department from attempting to collect income tax on proceeds the petitioner earned from allegedly illegal activity. *Id.* at 791. The court criticized the Department for basing its assessment on "police reports which were not prepared for the purpose of an audit and depth of the audit did not include a review of bank accounts and bank records." *Id.* at 790.

In this case, the unresolved criminal charges have gone beyond the mere allegation stage. Although not yet accepted by the court, Taxpayer has submitted a "Petition to Enter Plea of Guilty and Plea Agreement." In that proposed Agreement - signed by Taxpayer and his counsel and in exchange for the government's agreement "not to bring other federal charges against the [Taxpayer]" - Taxpayer agreed to pay a "special fee" and to pay \$236,419 in restitution. In addition, Taxpayer agreed to plead guilty to the criminal offense of wire fraud and agreed that the government was able to establish "beyond a reasonable doubt" that Taxpayer had misappropriated funds belonging to his title company's escrow account. The agreement further stipulated that the Indiana State Police and the Secret Service had reconstructed Taxpayer's books, records, accounting software, and wire transactions "in and out of escrow account" and that the investigation had established that Taxpayer "was improperly using funds from the escrow account for purposes other than those permitted by law."

Unlike the petitioner in *Keller*, the Department does not agree that the assessment at issue is based solely on "police reports," unsubstantiated allegations, and that - based on the information at hand - the assessments were premature.

IC § 6-8.1-5-1(a) imposes upon the Department the responsibility of assessing taxes based on the best information available to it. Based on information originally supplied the Department by the United States attorney, the original allegation that Taxpayer had embezzled money in order to pay both Taxpayer's business and personal expenses, and specific information now substantiated by Taxpayer's own plea agreement, the Department does not agree that the assessments should be set aside. Taxpayer has failed to provide documentation or information necessary under IC § 6-8.1-5-1(c) for him to establish that the proposed assessment was wrong.

FINDING

Taxpayer's protest is denied.

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